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EXAMINER
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MATHEW, HEMANT MATHAI

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* KENNETH P. GLYNN

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Appeal 2011-000248  
Application 11/474,618  
Technology Center 3700

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Before LINDA E. HORNER, KEN B. BARRETT, and  
CARL M. DeFRANCO, *Administrative Patent Judges*.

HORNER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Kenneth P. Glynn (Appellant) seeks our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 21-40, which are all of the pending claims. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM-IN-PART and enter NEW GROUNDS OF REJECTION pursuant to our authority under 37 C.F.R. § 41.50(b).

## THE INVENTION

Appellant's claimed invention relates to "a reversible grill with a plurality of orifices or slots to permit food fats, such as grease, to drip down into or through the device" and nesting recesses in one side of the grill for cooking meatballs and other small food masses. Spec., para. [0002]. Claims 21 and 29 are independent. Claim 21, reproduced below, is illustrative of the subject matter on appeal.

21. A reversible grilling device for grilling, broiling, frying, baking, and steaming, which consists of:

a single component element of rigid heat conductive material having a top and a bottom and at least one side wall, said side wall having a height of about 0.5 inches to about 3 inches, said top having a flat surface and said bottom having a flat surface, said single component element having a plurality of orifices passing from said top to said bottom, and said top flat surface having a plurality of nesting recesses, each of said nesting recesses traversing a plurality of said orifices;

wherein said device is adapted to be placed adjacent a heating means for cooking with said top surface up to cook a plurality of food units in said plurality of recesses, and said device is adapted to be placed adjacent said heating means for cooking with said bottom surface up to cook at least one food unit on said flat surface.

Independent claim 29 is also directed to a reversible grilling device. Claim 29 is similar to claim 21 except that claim 29 omits the limitation of "each of said nesting recesses traversing a plurality of said orifices" and claim 29 calls for the nesting recesses to be "spherical section recesses."

### THE REJECTIONS

Appellant seeks review of the following rejections:<sup>1</sup>

1. Claims 29-34 and 38-40 under 35 U.S.C. § 103(a) as being unpatentable over Geronimo (EP 0 498 048 A1; pub. Aug. 12, 1992);
2. Claims 21-27, 29, and 33 under 35 U.S.C. § 103(a) as being unpatentable over Castellani (US 6,431,059 B1; iss. Aug. 13, 2002);  
and
3. Claims 28 and 35-37 under 35 U.S.C. § 103(a) as being unpatentable over Castellani and Geronimo.

### ANALYSIS

#### *Rejection 1 - Claims 29-34 and 38-40 as unpatentable over Geronimo*

The Examiner found that Geronimo discloses a grilling device including a top flat surface having a plurality of nesting recesses (grease guiding channels 13), “each of said nesting recesses being spherical section recesses (as schematically shown in Fig. 2).” Ans. 4. *See also* Ans. 9-10 (finding that “the grease-guiding channels also have spherical section recesses in which a section of the channels are spherically shaped (as schematically shown in Fig[s]. 3 and 4)”).

The Specification describes that “[i]n some preferred embodiments of the present invention grilling device the plurality of recesses are a plurality

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<sup>1</sup> To the extent Appellant also seeks review of the Examiner’s objections to any of claims 21, 23, 25, 29, and 31 (Br. 4-5), such objections are reviewable by petition under 37 C.F.R. § 1.181, and thus are not within the jurisdiction of the Board. *See Manual of Patent Examining Procedure* (MPEP) §§ 1002.02(c)(4) and 1201 (8th Ed., Rev. 9, Aug. 2012).

of spherical section recesses.” Spec., para. [0013]. Figure 1 shows a reversible grilling device 1 having a top surface 3 with rectangular drainage slots 9, 13, 35, 55, and 57 cut therethrough and nesting recesses 17, 19, 21, and 41 cut therein. Spec., para. [0026]. A portion of the drainage slots are located within the nesting recesses. Spec., para. [0027]; fig. 1. The nesting recesses are shown as being cut in the shape of a portion of a sphere and are described as being “for receiving meatballs and other similar piece meal foods.” Spec., para. [0026]; fig. 1. Based on the description of the invention provided in the Specification, we agree with Appellant (Br. 7) that a person skilled in the art would understand “spherical section recesses” to refer to “recesses that have the shapes of a section of a sphere.”

Geronimo discloses a gridiron having grease guiding channels 13 stamped in a top surface thereof and slots 12 formed through the top surface and disposed between the grease guiding channels 13. Geronimo, col. 3, ll. 20-29; figs. 2, 3. As visible in the figures of Geronimo, the grease guiding channels 13 are elongated, tapered troughs each with an arcuate end and a pointed end and having a parabolic cross-section. Figs. 2-4; Br. 7. Contrary to the Examiner’s finding, Geronimo’s channels 13 are not recesses that have the shapes of a section of a sphere. Based on our interpretation of “spherical section recesses” discussed *supra*, we find that Geronimo does not disclose “nesting recesses being spherical section recesses” as called for in independent claim 29. The Examiner’s conclusion of obviousness of claim 29 is based on an erroneous finding of fact as to the disclosure of

Geronimo. For this reason, we cannot sustain the rejection of claim 29, or its dependent claims 30-34 and 38-40 as being unpatentable over Geronimo.

*Rejection 2 - Claims 21-27, 29, and 33 as unpatentable over Castellani*

Appellant argues the claims subject to this ground of rejection as a group. Br. 7-8. We select claim 29 as representative, and claims 21-27 and 33 stand or fall with claim 29. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2011).

The Examiner found that Castellani discloses a grilling device including a bottom having a flat surface and that is capable of being placed adjacent a heating means for cooking with the bottom surface and is capable to cook at least one food unit on the flat surface depending on the food being cooked and the size of the food being cooked. Ans. 6-7 (citing Castellani, fig. 2).<sup>2</sup> Appellant asserts that the devices of Castellani “structurally do not have flat bottoms” and that “Castellani’s single-component element has a bottom with a plurality of convex bumps formed opposite the concave recesses on the top.” Br. 8. Appellant argues “[w]ithout a flat bottom, [the] Castellani device cannot be used to be turned over for grilling steaks and

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<sup>2</sup> The Examiner found that Castellani discloses all the elements called for in claim 29 except that it does not specifically disclose the side wall having a height of about 0.5 inches to about 3 inches. Ans. 7. The Examiner determined that the specific dimensions of the side wall height would have been obvious to one of ordinary skill in the art as a matter of routine experimentation. *Id.* Appellant does not contest the Examiner’s determination as to obviousness of the claimed side wall height or contest the Examiner’s findings that Castellani discloses the other elements called for in claim 29 except for the particular claim limitations discussed in this opinion.

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fish” and that “if Castellani were flipped upside-down, the drainage holes in that orientation would be above the places where grease would collect, and no drainage holes would be found where the grease does collect.” *Id.*

We agree with the Examiner that Castellani’s device, which is formed out of a single material such as metal, is capable of being used over a heating means with either side facing up for cooking a food unit thereon.

Ans. 11. With regard to Appellant’s argument that the bottom of Castellani’s device does not have a flat surface, we find that the portion of the bottom that lies between the adjacent recesses forms a flat surface on which a food unit can be cooked. *See* Castellani, figs. 1, 2. As to Appellant’s argument that the bottom of Castellani cannot be used to grill steaks or fish, claim 29 calls for the bottom to be adapted to be used to cook at least one food unit on the flat surface. The claim does not specify the particular type of food or a food unit of a particular size to be cooked. With regard to Appellant’s argument that when flipped with the bottom facing up, no drainage holes would be found where the grease collects, such argument is not persuasive of error because it is not commensurate with the language of claim 29, which does not call for the orifices to be located where grease collects when the bottom is facing up. As such, we sustain the Examiner’s rejection of claims 21-27, 29, and 33 under 35 U.S.C. § 103(a) as unpatentable over Castellani.

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*Rejection 3 - Claims 28 and 35-37 as unpatentable over Castellani and Geronimo*

The Examiner found that it would have been obvious to one of ordinary skill in the art at the time of Appellant's invention to modify the device of Castellani to add a hanging orifice (claim 28), based on the teachings of Geronimo, "to allow for the baking device to be hung on a wall rack for easy storage." Ans. 8. The Examiner also found that it would have been obvious to one of ordinary skill to modify the device of Castellani to add a base and legs (claims 35-37), as taught in Geronimo, "to allow the baking device to stand within the oven and allow space to be created under the cooking surface for warm air to travel and heat the baking device and food evenly." Ans. 8-9.

With regard to claim 28, Appellant argues that to use the handle of Geronimo as a hanging orifice, the legs of the grill would protrude from the wall in a dangerous manner, which would discourage anyone from using the handle in such a manner or applying it to Castellani. Br. 9. We agree with the Examiner (Ans. 12) that based on the teaching in Geronimo to add a handle to a gridiron, it would have been obvious to add a handle to the device of Castellani, and that in making such a modification, a gap would be formed between the handle and the pan thereby creating an orifice by which the pan could be hung. As such, we affirm the rejection of claim 28 under 35 U.S.C. § 103(a) as unpatentable over Castellani and Geronimo.

Appellant presents no arguments specifically rebutting the Examiner's rejection of claims 35-37. As such, we affirm the rejection of claims 35-37

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under 35 U.S.C. § 103(a) as unpatentable over Castellani and Geronimo for the same reasons as provided *supra* in our analysis of claims 21, 23, and 26, from which these claims depend.

#### NEW GROUNDS OF REJECTION

We enter new grounds of rejection under 35 U.S.C. § 103(a) of claims 30-32 as being unpatentable over Castellani and of claims 34 and 38-40 as being unpatentable over Castellani and Geronimo. Claims 30-32, 34, and 38-40 depend directly or indirectly from independent claim 29, and their claim limitations mirror the limitations found in dependent claims 22, 23, 26, 28, and 35-37, respectively. For the same reasons that we affirmed the rejections of dependent claims 22, 23, and 26 as being unpatentable over Castellani and claims 28 and 35-37 as being unpatentable over Castellani and Geronimo, we now enter new grounds of rejection of dependent claims 30-32, 34, and 38-40 under 35 U.S.C. § 103(a). We note that Appellant did not contest the Examiner's findings (Ans. 7) that Castellani discloses the subject matter of claims 22, 23, and 26. Br. 7-8. Appellant also did not present arguments specifically rebutting the Examiner's rejection (Ans. 8-9) of claims 35-37 over the combination of Castellani and Geronimo. Br. 9. Appellant did present arguments rebutting the rejection of claim 28, but we found those arguments unpersuasive, and thus enter a new ground of rejection of claim 34 for the same reasons relied on by the Examiner in the rejection of claim 28.

DECISION

We REVERSE the decision of the Examiner to reject claims 30-32, 34, and 38-40. We AFFIRM the decision of the Examiner to reject claims 21-29, 33, and 35-37. We enter NEW GROUNDS OF REJECTION of claims 30-32, 34, and 38-40 under 35 U.S.C. § 103(a).

Regarding the affirmed rejections, 37 C.F.R. § 41.52(a)(1) provides “Appellant may file a single request for rehearing within two months from the date of the original decision of the Board.”

In addition to affirming the Examiner’s rejections of one or more claims, this decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new grounds of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution.* Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the Examiner, in which event the proceeding will be remanded to the Examiner. . . .

(2) *Request rehearing.* Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

Should Appellant elect to prosecute further before the Examiner pursuant to 37 C.F.R. § 41.50(b)(1), in order to preserve the right to seek review under 35 U.S.C. §§ 141 or 145 with respect to the affirmed

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rejections, the effective date of the affirmance is deferred until conclusion of the prosecution before the Examiner unless, as a mere incident to the limited prosecution, the affirmed rejections are overcome.

If Appellant elects prosecution before the Examiner and this does not result in allowance of the application, abandonment or a second appeal, this case should be returned to the Patent Trial and Appeal Board for final action on the affirmed rejections, including any timely request for rehearing thereof.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART; 37 C.F.R. § 41.50(b)

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